

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) RANDY BLAKE PATTERSON,)
)
Plaintiff,)
)
v.) Case No. CIV-15-1204-HE
)
(1) NATIONAL BOARD OF MEDICAL)
EXAMINERS,)
)
Defendant.)

**DEFENDANT'S OBJECTIONS TO PLAINTIFF'S
FINAL WITNESS AND EXHIBIT LISTS**

COMES NOW Defendant, National Board of Medical Examiners (“NBME”), and submits its objections to Plaintiff’s Final Witness List [Doc. No. 40] and Plaintiff’s Final Exhibit List [Doc. No. 41] filed herein on June 30, 2016.

NBME makes the following specific objections to Plaintiff’s Final Witness List:

<u>WITNESS</u>	<u>OBJECTION(S)</u>
Plaintiff, Randy Blake Patterson c/o CLARK & MITCHELL 101 Park Avenue, Suite 210 Oklahoma City, OK 73102	Improper Opinion (FRE 701, 702)
Randy and Bonnie Patterson c/o CLARK & MITCHELL 101 Park Avenue, Suite 210 Oklahoma City, OK 73102	Improper Opinion (FRE 701, 702) Lack of Personal Knowledge (FRE 602) Hearsay (FRE 802)
Kevin Smith, DDS 1000 N Lincoln Blvd., Suite 200 Oklahoma City, OK 73104	Improper Opinion (FRE 701, 702) Lack of Personal Knowledge (FRE 602) Hearsay (FRE 802)

Gerry Dillon c/o MILLER DOLLARHIDE, PC 210 Park Avenue, Suite 2550 Oklahoma City, OK 73102	
William Dooley, M.D. 825 NE 10 th Street, Suite 5200 Oklahoma City, OK 73104	Improper Opinion (FRE 701, 702)
Herman Jones, Ph.D. 711 Stanton L Young Blvd., Suite 210 Oklahoma City, OK 73104	Improper Opinion (FRE 701, 702)
Marion Proctor c/o MILLER DOLLARHIDE, PC 210 Park Avenue, Suite 2550 Oklahoma City, OK 73102	
Pete Johnson c/o MILLER DOLLARHIDE, PC 210 Park Avenue, Suite 2550 Oklahoma City, OK 73102	
Rachael Gillespie c/o MILLER DOLLARHIDE, PC 210 Park Avenue, Suite 2550 Oklahoma City, OK 73102	
Mary Patterson c/o MILLER DOLLARHIDE, PC 210 Park Avenue, Suite 2550 Oklahoma City, OK 73102	
All witnesses produced by Defendant in response to Plaintiff's Rule 30(b)(6) corporate deposition notice, filed 5/26/2016 not otherwise objected to by Plaintiff	
All experts listed by Defendant	
All witnesses listed and/or testimony entered at trial by Defendant, National Board of Medical Examiners, not otherwise objected to by Plaintiff	Objection(s) reserved until more specifically identified

NBME makes the following specific objections to Plaintiff's Final Exhibit List:

<u>PLAINTIFF'S EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>OBJECTION(S)¹</u>
1.	Resume of Plaintiff, Randy Blake Patterson, M.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602)
2.	Student Action dated August 13, 2011 to Plaintiff signed by Herman Jones Ph.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
3.	Plaintiff's letter to Esteemed Academic Promotions Committee dated June 1, 2010	
4.	September 22, 2009 Email correspondence between Plaintiff the [sic] Jennifer S. McCartney (HSC)	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

¹NBME objects to the vague descriptions of Plaintiff's exhibits. NBME and virtually every subpoenaed party have produced documents with a bates label. Without reference to bates number, and with the vague descriptions, NBME cannot always be sure which documents Plaintiff is listing. NBME has attempted to go back through the documents in order to determine to which documents Plaintiff makes reference.

5.	Letter dated September 18, 2009 from Scott Lee Sharp, Attorney at Law	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
6.	September 29, 2009 Email Correspondence between Plaintiff and Jody A. Summers Rada (HSC)	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
7.	October 1, 2009 Email correspondence between Plaintiff and Jody A. Summers Rada (HSC)	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
8.	Letter to University of Oklahoma College of Dentistry Admissions Committee regarding Plaintiff by Kevin S. Smith DDS	
9.	April 23-24, 2012 Email correspondence between Plaintiff and Dr. Herman Jones	
10.	October 17-18, 2012 Email correspondence between Plaintiff and Dr. Herman Jones	
11.	Memorandum dated July 14, 2010 to Plaintiff's File from M. Dewayne Andrews, M.D. Executive Dean	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

12.	USMLE Certified Transcript of Scores dated December 16, 2013	Objection(s) reserved until produced
13.	NBME letter dated March 22, 2013 to Plaintiff and signed by Marian D. Proctor	Relevance (FRE 401, 402) Hearsay (FRE 802)
14.	The University of Oklahoma Records and Enrollment Verification	The University of Oklahoma has provided in excess of 1,100 pages of records. Objection(s) reserved until produced and more specifically identified
15.	Correspondence between Plaintiff and Anita Hagan at Stanford University	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until produced and more specifically identified
16.	Plaintiff's University of Oklahoma Transcript	None as to certified copy of transcript. Additional objection(s) reserved until produced and more specifically identified
17.	Letter of Recommendation for Plaintiff from Ronald D. Legako, M.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
18.	Letter of Recommendation for Plaintiff from Russell G. Postier, M.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

19.	Letter of Recommendation for Plaintiff from Vaidy S. Rao, M.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
20.	Letter of Recommendation for Plaintiff from OU Department of Surgery	Objection(s) reserved until produced and more specifically identified.
21.	Letter of Recommendation for Plaintiff from William C. Dooley, M.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
22.	Letter of Recommendation for Plaintiff from Roxie M. Albrecht, M.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
23.	Letter of Recommendation for Plaintiff from Jerry B. Vannatta, M.D.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

24.	Photographs of Plaintiff's Facebook entries	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objections reserved until produced and more specifically identified.
25.	Email from Plaintiff to the University of Oklahoma dated October 29, 2012, re: Interview	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
26.	Email from Plaintiff to the Stanford University dated October 30, 2012, re: Interview	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) NBME also objects because the complete email exchange was not produced. Additional objection(s) reserved until fully produced.
27.	Email from Plaintiff to the Stanford University dated February 5, 2013, re: Interview	Objection(s) reserved until produced.
28.	Email from Plaintiff to the Stanford University dated February 8, 2013, re: Interview	Objection(s) reserved until produced.
29.	Email from Plaintiff to the Stanford University dated October 21, 2013, re: Interview	Objection(s) reserved until produced.
30.	Email from Plaintiff to the UAMS dated November 25, 2013, re: Interview	Objection(s) reserved until produced.

31.	Email from Plaintiff to the USAF dated December 3, 2013, re: Interview	Objection(s) reserved until produced.
32.	Email from Plaintiff to the University of Colorado dated December 27, 2013, re: Interview	Objection(s) reserved until produced.
33.	Email from Plaintiff to the Wake Forest Baptist Medical Center dated December 27, 2013, re: Interview	Objection(s) reserved until produced.
34.	Email from Plaintiff to the Vanderbilt University Medical Center dated January 20, 2014, re: Interview	Objection(s) reserved until produced.
35.	Email from Plaintiff to the University of Washington dated January 24, 2014, re: Interview	Objection(s) reserved until produced.
36.	Email from Plaintiff to the John Hopkins dated January 28, 2014, re: Interview	Objection(s) reserved until produced.
37.	Email from Plaintiff to the University of Oklahoma dated January 30-31, 2014, re: Interview	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) NBME also objects because the complete email exchange was not produced. Additional objection(s) reserved until fully produced.
38.	Email from Plaintiff to the Medical University of [sic] dated February 5, 2014, re: Interview	Not sufficiently identified for NBME to know to which University Plaintiff refers. Objection(s) reserved until produced.

39.	Email from Plaintiff to the University of Oklahoma-Tulsa dated December 12, 2014, re: Interview	Objection(s) reserved until produced.
40.	Email from Plaintiff to the University of Oklahoma-Tulsa dated January 26, 2015, re: Interview	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) NBME also objects because the complete email/email exchange was not produced. Additional objection(s) reserved until fully produced.
41.	AT&T Phone Records of Plaintiff	None as to records from March and April 2013. Additional objection(s) reserved until produced and more specifically identified.
42.	USMLE Scheduling Permit Eligibility August 30, 2012 - August 30, 2013	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
43.	Correspondence between NBME and Plaintiff re: power outage, dated March 22, 2013	There is more than one correspondence between NBME and Plaintiff dated March 22, 2013. Objection(s) reserved until produced and/or more specifically identified.
44.	USMLE Correspondence with Plaintiff, dated April 28, 2013	Objection(s) reserved until produced and/or more specifically identified.
45.	USMLE Registration Documentation	Objection(s) reserved until produced and/or more specifically identified.

46.	Summary of Incident and Statement of Concern submitted by Plaintiff to USMLE, dated January 7, 2013	Relevance (401, 402) Hearsay (FRE 802) Prejudicial, Confusion of the Issues, and Misleading (FRE 403) Identification and Authentication (FRE 901)
47.	Summary of Incident and Statement of Concern submitted by test takers (names redacted) to USMLE, dated January 7, 2013	Relevance (401, 402) Hearsay (FRE 802) Prejudicial, Confusion of the Issues, and Misleading (FRE 403) Foundation (FRE 602) Identification and Authentication (FRE 901)
48.	2013 Bulletin of Information	
49.	NBME Licensing Exam Services Permit Available Dates	Objection(s) reserved until produced and/or more specifically identified.
50.	National Resident Matching Program Applicant Rank Order List	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Plaintiff prepared more than one Rank Order List. Additional objection(s) reserved until produced and more specifically identified.

51.	National Resident Matching Program Results & Data	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Plaintiff does not identify to which year's results and data he refers. Additional objection(s) reserved until produced and more specifically identified.
52.	<i>A Critical Review of Standardized Patient Examination as Part of the USMLE</i> . AMA Journal of Ethics, Hilary Johnson, Ph.D., December 2003, Vol. 5, No. 12	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
53.	<i>The Step 2 Clinical Skills Exam - A Poor Value Proposition</i> . The New England Journal of Medicine, March 7, 2013	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
54.	<i>Quality, Cost, and Value of Clinical Skills Assessment</i> . The New England Journal of Medicine, 368;10 [sic], March 7, 2013	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

55.	<i>A July Spike in Fatal Medication Errors and a Possible Effect of New Medical Residents.</i> Department of Sociology, University of California San Diego, David P. Phillips, Ph.D. & Gwendolyn E.C. Barker, BA	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
56.	<i>C. Earl Grant v. National Board of Medical Examiners, et. al.</i> , Case No. 7:07-cv-996, United States District Court Northern District of New York. Decision and Order.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until produced and more specifically identified.
57.	<i>Sophie C. Currier, on behalf of herself and on behalf of Lea M. Gallien-Currier v. National Board of Medical Examiners.</i> Commonwealth of Massachusetts, Appeals Court, 07-J-434. Order.	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until produced and more specifically identified.
58.	<i>Medical students confront a residency black hole</i> , Fortune.com, Elizabeth G. Olson, April 1, 2013	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until produced and more specifically identified.

59.	National Provider Identifiers Registry	Objection(s) reserved until produced and more specifically identified.
60.	Form 990 Return of Organization Exempt from Income Tax, 2012 NBME	Relevance (FRE 401, 402) Prejudicial, Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
61.	USMLE Application of Plaintiff submitted August 29, 2012	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
62.	USMLE Application of Plaintiff submitted April 24, 2013	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
63.	Plaintiff's AT&T Records (March and April, 2013)	
64.	Incident Report dated March 22, 2013 from Defendant	Objection(s) reserved until produced and more specifically identified.
65.	Written notification made by Plaintiff of Incomplete Examination Record	Objection(s) reserved until produced and more specifically identified.
66.	Plaintiff's Certification of Identification and Authorization Form	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
67.	USMLE Applicant Registrations	Objection(s) reserved until produced and more specifically identified.

68.	Examinee Inquiry for Score Report dated March 25, 2013	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
69.	Examinee Inquiry for EP Ext/Change dated August 23, 2013	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
70.	Email dated April 26, 2013 between Plaintiff and USMLE re: Reimbursement for fees paid for retake	Objection(s) reserved until produced.
71.	Seven USMLE Examinee Reports of Incident dated January 7, 2013	Relevance (FRE 401, 402) Cumulative (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
72.	Interruption/Resuming the Exam Procedure	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
73.	Score Recheck Request Form for USMLE completed by Plaintiff	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
74.	Correspondence from Harolyn Johnson, NBME dated January 28, 2013 to Plaintiff re: recheck responses on 12/22/2012 USMLE Step 2 CK	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

75.	Correspondence, page 1-2, from Marian Proctor, NBME dated March 27, 2013 to Plaintiff re: Power Outage	Relevance (FRE 401, 402) Cumulative (FRE 403) Hearsay (FRE 802)
76.	March 22, 2013 Letter to Plaintiff from NBME, Marian D. Proctor re: Power Outage	Relevance (FRE 401, 402) Cumulative (FRE 403) Hearsay (FRE 802)
77.	USMLE Step 1 and Step 2 CK Eligibility Period Extension Form signed by Plaintiff on August 23, 2013	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
78.	Email dated April 16, 2015 to Plaintiff from NBME requesting duplicate transcript mailed to alternate address	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
79.	Email dated August 30, 2012 to Plaintiff from USMLE re: registration incomplete	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
80.	Email dated August 30, 2012 to Plaintiff from USMLE re: Registration complete	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
81.	Email dated August 31, 2012 to Plaintiff from USMLE re: Scheduling permit	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
82.	USMLE Test Administration and Processing Problems-Decision Rules	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

83.	Email dated March 6, 2013 from Diane Convery to Kevin Balog, Gerry Dillon, cc: Kimberly A. Swygert, Re: response to Plaintiff regarding power outage	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
84.	Email dated February 25, 2013 from Kevin Balog to Diane Convery, Gerry Dillon, cc: Kimberly A. Swygert, Re: report of power outage	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)
85.	Plaintiff's Medical Student Performance Evaluation dated October 1, 2012 prepared by Herman Jones	Relevance (FRE 401, 402) Confusion of the Issues (FRE 403) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until more specifically identified.
86.	NBME letter dated January 13, 2013 to Plaintiff re: confirming presence for Step 2 CS exam	Objection(s) reserved until produced and more specifically identified
87.	NBME letter dated August 6, 2013 to Plaintiff re: confirming presence for Step 2 CS exam	Objection(s) reserved until produced and more specifically identified
88.	Email dated August 8, 2013 to Marian Proctor from Plaintiff requesting expedited test results from exam on August 6, 2013	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901)

89.	MedScape Physicians Compensation Report for 2013	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until produced and more specifically identified.
90.	MedScape Physicians Compensation Report for 2014	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until produced and more specifically identified.
91.	MedScape Physicians Compensation Report for 2015	Relevance (FRE 401, 402) Hearsay (FRE 802) Foundation (FRE 602) Identification and Authentication (FRE 901) Additional objection(s) reserved until produced and more specifically identified.
92.	American Medical Association Medical Student Section Resolution 01(A-16)	Objection(s) reserved until produced and more specifically identified.
93.	Documents elicited from Defendant or discussed during 7/15/16 deposition in response to Plaintiff's 30(b)(6) Notice filed 5/26/16	Objection(s) reserved until produced and more specifically identified.

DATED this 15th day of July, 2016.

Respectfully submitted,

/s/ Andrea R. Rust

Jack S. Dawson, OBA #2235
Amy L. Alden, OBA #16978
Andrea R. Rust, OBA #30422
MILLER DOLLARHIDE, P.C.
210 Park Avenue, Suite 2550
Oklahoma City, OK 73102
Telephone: (405) 236-8541
Facsimile: (405) 235-8150
jdawson@millerdollarhide.com
aalden@millerdollarhide.com
arust@millerdollarhide.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2016, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based upon the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Steven E. Clark, clark@clarkmitchell.com
Heather Mitchell, heather@clarkmitchell.com
Katie L. Templeton, katie@clarkmitchell.com
CLARK & MITCHELL, P.C.
101 Park Ave., Suite 210
Oklahoma City, Oklahoma 73102
Attorneys for Plaintiff

/s/ Andrea R. Rust
